

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: ARC AIRBAG INFLATORS
PRODUCTS LIABILITY
LITIGATION

MDL No. 3051
Case No. 1:22-md-03051-ELR

**PLAINTIFFS' MOTION FOR
LEAVE TO FILE SURREPLY IN
OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS**

Plaintiffs seek leave to file a surreply, attached as Exhibit A, in opposition to Defendants' eleven motions to dismiss. Plaintiffs submit that a surreply is warranted on two grounds:

First, the Airbag Module Defendants and the Automaker Defendants erroneously claim Plaintiffs do not address, and thus "concede," several issues raised in the motions. As Plaintiffs explain in the proposed surreply, their opposition briefs fully addressed the grounds on which Defendants moved to dismiss. Ex. A at 2-6. The Court should not allow Defendants to misrepresent the record, and permitting Plaintiffs to address those mischaracterizations through a surreply is particularly important given the potential for confusion in light of the parties' numerous, lengthy submissions detailing myriad issues.

Second, in their motion to dismiss, the Automaker Defendants contended Plaintiffs "lack standing to bring claims arising under the laws of states in which they do not reside and did not sustain any injury, and for their 'nationwide'

claims.” Dkt. 181-1 at 6. Plaintiffs explained in their opposition that the Eleventh Circuit has rejected this exact argument. Dkt. 221 at 4-6 (discussing *In re Zantac (Ranitidine) Prods. Liab. Litig.*, 2022 WL 16729170 (11th Cir. Nov. 7, 2022)).

Rather than acknowledge this, on reply the Automaker Defendants seek to reframe their Article III *standing* argument as a *pleading* challenge under *Rule 12(b)(6)*.

Dkt. 249 at 2-4. As discussed in the proposed surreply, the Automakers waived that argument by failing to raise it in their initial briefs, and in any event it is meritless. Ex. A at 6-9.

Although the Local Rules do not expressly contemplate surreplies, “a court may in its discretion permit the filing of a surreply” and should do so “where a valid reason for such additional briefing exists.” *Home-Owners Ins. Co. v. Spring St. Rest. Grp., LLC*, 2020 WL 13892588, at *1 (N.D. Ga. Dec. 10, 2020) (Boulee, J.) (citation and internal quotation marks omitted). A surreply is appropriate where, as here, a party has mischaracterized the record or raised new arguments on reply. *See, e.g., Kim v. Fortenberry*, 2019 WL 13227440, at *5 (N.D. Ga. Nov. 12, 2019) (Ross, J.) (“[N]ew arguments . . . raised for the first time in Defendants’ reply brief[] are precisely the type of justification that would warrant this Court’s granting leave to file a surreply.”); *Cadillac Jack, Inc. v. MNS Gaming, LLC*, 2009 WL 10668899, at *1 n.2 (N.D. Ga. May 12, 2009) (Batten, J.) (granting leave to file surreply that “addresse[d] new issues raised by [defendants] in their reply

brief”); *Trigeant Ltd. v. Petroleos De Venez., S.A.*, 2009 WL 10668636, at *3 (S.D. Fla. Feb. 10, 2009) (granting leave to file surreply, including “to correct mischaracterizations of [Plaintiffs’] position and the law”) (alteration in original) (internal quotation marks omitted)); *Cobb Theatres III, LLC v. AMC Entm’t Holdings, Inc.*, No. 1:14-cv-182-ELR (N.D. Ga. Feb. 23, 2016) (Ross, J.), Dkts. 95, 100 (granting leave to file surreply where plaintiff sought “to clarify the record and to respond to [defendants’] new arguments in [their] Reply”).

Plaintiffs therefore respectfully request that the Court grant them leave to file the proposed surreply in opposition to Defendants’ motions to dismiss.

Dated: March 22, 2024

Respectfully submitted,

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CERTIFICATION

Pursuant to Civil Local Rule 7.1, the undersigned counsel certifies this motion has been prepared with one of the font and point selections approved by the Court in Civil Local Rule 5.1.

/s/ David S. Stellings

David S. Stellings

CERTIFICATE OF SERVICE

On March 22, 2024, I hereby certify that I have caused a true and correct copy of the foregoing to be filed with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to all counsel of record.

/s/ David S. Stellings
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